IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 577 of 2001
With
FIRST APPEAL No. 2491 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
AND
HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ORIENTAL INSURANCE CO LTD. - Appellant(s)
Versus
SHANTABEN LADHARAM PATEL (MAKANI)WD/O LATE LADHARAM & 6 - Defendant(s)

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Appearance :
MR MAULIK J SHELAT for Appellant(s) : 1,
MR MEHUL S SHAH for Defendant(s) : 1 - 5.
MR SURESH M SHAH for Defendant(s) : 1 - 5.
None for Defendant(s) : 6,
RULE SERVED for Defendant(s) : 7,

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH
and
HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 14/02/2007

COMMON ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE M.S.SHAH)

These cross appeals are directed against the judgment and order dated 28.9.2000 passed by the Motor Accident Claims Tribunal, Kachchh at Bhuj below application Exh.6 in MAC Petition No. 28 of 2000.

2. The claim petition was filed by the widow, two adult sons and old parents of Ladharam Valji Patel who died on account of the injuries sustained in a motor vehicle accident arising from the use of the vehicle insured by Oriental Insurance Co. Ltd. (appellant in First Appeal No. 577 of 2001 – hereinafter referred to as “the Insurance Company”). The claim petition was filed for compensation of Rs.13,42,833/- under Section 166 of the Motor Vehicles Act, 1988. Application Exh.6 was filed by the claimants for compensation under Section 163A of the Act on the basis of the structured formula contained in the Second Schedule to the Act. The Tribunal passed the impugned order awarding compensation of Rs.2,00,200/- with interest at the rate of 12% per annum from the date of the claim petition till deposit.

3. The Insurance Company has come in appeal against the said order contending that the order under Section 163A of the Act cannot be passed at an interim stage when the claim petition under Section

166 of the Act is still pending.

4. On the other hand, the claimants have filed the cross appeal for enhancement of the compensation amount.

5. In view of the order that is proposed to be passed, it is not necessary to set out all the facts in detail. Suffice it to state that the deceased was driving a scooter on 14.9.1999. The driver of the truck insured by the Oriental Insurance Company Ltd. lost the control over the truck and the truck collided with the scooter. The deceased died on the spot because of the serious injuries in that accident. The widow, two sons and old parents of the deceased who himself was aged 57 years filed the above numbered claim petition for compensation of Rs.13,42,833/-. In view of the legal position then prevailing, the claimants filed application Exh.6 as an application for interim compensation under Section 163A of the Act and the Tribunal allowed the said application awarding interim compensation of Rs.2,00,200/- with interest at the rate of 12% per annum from the date of the claim petition.

6. Mr Mitul Shelat, learned counsel for the Insurance Company has submitted that in view of the decisions of the Apex Court in Oriental Insurance Co. Ltd. vs. Hansrajbhai V Kodala, (2001) 5 SCC 175 = 2001 ACJ 827 and Deepal Girishbhai Soni vs. United India Insurance Co. Ltd., 2004 ACJ 934 = 2004(3) SCC

385, the compensation under Section 163A has to be the final compensation and no interim compensation can be awarded under Section 163A of the Act. It is submitted that Claim Petition No. 28 of 2000 is still pending and, therefore, the Tribunal could not have passed the impugned order below application Exh.6 in the said claim petition.

7. Mr Mehul Suresh Shah, learned counsel appearing for the original claimants states, under instructions, that the claimants have decided to accept the compensation awarded by the Tribunal under the impugned order dated 28.9.2000 as final compensation and undertake to withdraw MAC Petition No. 28 of 2000. Mr Shah further, under instructions, seeks leave to withdraw First Appeal No. 2491 of 2001 before effective hearing.

8. In view of the statements coming from Mr Mehul Shah for the original claimants, it is obvious that the compensation of Rs.2,00,200/- with interest thereon awarded by the Tribunal, though styled as interim compensation in the impugned order, has been accepted by the claimants as final compensation and, therefore, the challenge levelled by the Insurance Company against the said order on the above ground does not survive.

As regards the grounds urged in the appeal memo challenging the assessment of income by the Tribunal and the compensation awarded under the

impugned order, having gone through the judgment under appeal and having heard the learned counsel for the Insurance Company, we do not find any merit in the challenge to the quantum of compensation awarded by the Tribunal. The deceased was an agriculturists. The claimants had produced documentary evidence regarding ownership of the land belonging to the deceased. The claimants had also produced documentary evidence to show that the deceased used to sell his agricultural products. In view of this evidence, the assessment of the income at Rs.3,000/- per month appears to be very much reasonable. The computation of compensation made by the Tribunal is in conformity with the provisions of the Second Schedule.

9. In view of the above discussion, First Appeal No. 577 of 2001 is dismissed after recording the statement made by Mr Mehul Shah for the claimants that the compensation of Rs.2,00,200/- with interest at the rate of 12% per annum awarded by the Tribunal under the impugned order dated 28.9.2000 is accepted by the claimants as final compensation and after recording the undertaking being given by the learned counsel for the claimants that the claimants shall withdraw Claim Petition No. 28 of 2000 within one month from today.

10. First Appeal No. 2491 of 2001 is permitted to be withdrawn and stands disposed of as withdrawn before effective hearing.

11. In view of disposal of the appeals, the interim order dated 30.7.2001 in Civil Application No. 1277 of 2001 is vacated with a further direction that upon maturity of the fixed deposit in which the amount is deposited, the claimants shall be permitted to withdraw the amount and the Tribunal will be at liberty to pass appropriate orders in this behalf.

Record and proceedings shall be sent back to the Tribunal forthwith.

[M.S. SHAH, J.]

[AKIL KURESHI, J.]

sundar/-